

1 MR. SHOOK: Well, for whatever reason, Benchmark has
2 chosen not to have Mr. Wilson appear as a witness.

3 JUDGE LUTON: This is a common kind of objection
4 that we run into, Mr. Meyers. The Bureau is concerned that
5 that particular statement and others in here like it are
6 offered to show the truth of the matter asserted therein,
7 namely that Mr. Wilson, who is not with us today, said to you
8 that he would survey the situation and let you know certain
9 findings. I don't know if that's Benchmark's intent or not
10 because of the way this thing is drafted. It leads off by
11 saying that you, Meyers, recalls something.

12 MR. MEYERS: Um-hum.

13 JUDGE LUTON: If it's offered only to state your
14 recollection as opposed to what Wilson actually said, then
15 it's not hearsay. My question to you is, which is it?

16 MR. MEYERS: You, you -- it is my recollection; my
17 recalling my memory of a situation --

18 JUDGE LUTON: All right.

19 MR. MEYERS: That this is what took place.

20 JUDGE LUTON: Not intending to show that Wilson --
21 that it's true that Wilson said he would survey blah, blah,
22 blah. This is what you recall.

23 MR. MEYERS: Yes, sir.

24 JUDGE LUTON: As opposed to being testimony by
25 Wilson. Is that good enough, Mr. Shook?

1 MR. SHOOK: Your Honor, if I understand, Benchmark
2 would be using that simply to show its state of mind and
3 nothing more.

4 JUDGE LUTON: I think so, that's the way I
5 understand it. Certainly not, it's not being offered as
6 Wilson's testimony.

7 MR. SHOOK: With that understanding, Your Honor, I
8 accept, accept that.

9 JUDGE LUTON: Okay, and not being hearsay, then the
10 objection is overruled.

11 MR. SHOOK: Your Honor, with respect to the next
12 paragraph, the second line from the bottom of that paragraph,
13 the phrase "whom Wilson knew well." Your Honor, the Bureau
14 objects to that. He's referencing Mr. Wilson's state of mind
15 and --

16 JUDGE LUTON: That's true. I'll grant that one.
17 Now, it, it --

18 MR. MEYERS: I'm sorry --

19 JUDGE LUTON: What precisely is it that you want
20 stricken there?

21 MR. SHOOK: The phrase "whom Wilson knew well."

22 JUDGE LUTON: Um-hum, so, so this would then read,
23 "Meyers believed that he also told Wilson that Huggins was the
24 station's attorney and to stay in contact with him." "Whom
25 Wilson knew well" -- Mr. Wilson ought to be the one to tell us

1 about that, about how well he knew somebody. It's a state of
2 mind problem, as the Bureau points out. I'm going to grant
3 the objection to strike the phrase "whom Wilson knew well."
4 The remainder of the paragraph and the sentence stands.
5 Mr. Shook?

6 MR. SHOOK: Your Honor, the Bureau's next objection
7 concerns the paragraph that begins on the bottom of page 15
8 and carries over to the top of page 16. Again, the question
9 here is whether --

10 JUDGE LUTON: Same one that we just --

11 MR. SHOOK: Yes, sir.

12 JUDGE LUTON: -- dealt with a little while ago.

13 MR. SHOOK: Yes, sir.

14 JUDGE LUTON: The question is whether it's offered
15 for the truth of the matters asserted there, or is it simply
16 to show Mr. Meyers' recollection, what he believes he recalled
17 at the time?

18 MR. MEYERS: And again I believe it's -- to my
19 recollection it's what I recalled having happen.

20 JUDGE LUTON: All right, it's your recollection.
21 Then that removes the hearsay objection.

22 MR. SHOOK: Your Honor, the Bureau has the same
23 objection, the hearsay objection, to the first sentence of the
24 next paragraph, the full paragraph on page 16, again with the
25 understanding that if this is limited to Mr. Meyers' state of

1 mind then there is, you know, no such objection.

2 JUDGE LUTON: Okay. Mr. Meyers, if you, on behalf
3 of Benchmark, want to show that Huggins had gained unofficial
4 permission for Meyers and Benchmark employees to enter the
5 property and start any work that could be reversed should
6 anything change, you need to have Mr. Huggins here telling us
7 that. The Bureau's concern is that with Mr. Huggins off
8 wherever he is, Mr. Huggins' testimony, as I've just read, is
9 going to come into this record --

10 MR. MEYERS: I --

11 JUDGE LUTON: -- without him being here. That would
12 not be proper. Again, are we seeking just your recollection
13 or is this kind of an important matter for which you'd really
14 like to have had Mr. Huggins here with us this morning?

15 MR. MEYERS: Well, there, there -- yes, sir, I
16 understand. There is a letter in here that I came across
17 finally and entered into this document that does relate this;
18 it, it does clarify it and I believe it's addressed here as
19 one of the attachments, and it escapes me why it's not
20 referenced to being in this particular paragraph but it does,
21 does come up again.

22 JUDGE LUTON: Well, I don't know what that other
23 context is. I've got to deal with the one right here.

24 MR. MEYERS: So then it has, it has to remain at
25 this point a recollection history.

1 JUDGE LUTON: For recollection only. This is not
2 Mr. Huggins' testimony. Your statement is not hearsay and it
3 will be permitted to stand.

4 MR. SHOOK: Your Honor, the Bureau's next objection
5 would be to the first full paragraph that appears on page 19
6 beginning in the middle of the paragraph. The sentence begins
7 with, "Also," through the rest of that paragraph. The Bureau
8 would object on the ground of hearsay. We do not have the
9 dealer here. This appears to be offered for the truth of the
10 matter stated by the dealer.

11 JUDGE LUTON: Mr. Meyers himself was a participant
12 in, in these events. I suppose it stretches things a bit for
13 him to purport to say what the dealer was interested in. At
14 the same time, however, Mr. Meyers dealt with the dealer;
15 ought to know what he's talking about. This is not the kind
16 of hearsay that I would strike. I'll overrule this objection
17 and permit that testimony to stand; overruled.

18 MR. SHOOK: Recognizing Your Honor's ruling, I don't
19 want to belabor the point. With respect to the next
20 paragraph, the Bureau would lodge a similar hearsay
21 objection --

22 JUDGE LUTON: Right.

23 MR. SHOOK: -- with respect to the second, the
24 second sentence of that paragraph.

25 JUDGE LUTON: Same ruling, I'll permit that to

1 stand. The view I'm taking it is that Mr. Meyers has given us
2 his reactions to a conversation that he had with, perhaps, the
3 dealer. I'm not even sure that that's hearsay. In any event,
4 objection overruled.

5 MR. SHOOK: Yes, sir. Your Honor, the Bureau
6 objects to -- it's on page 22, the only full paragraph that
7 appears on that page, the fifth line down, the phrase, "seemed
8 to know the area and --" That's referring to a contractor.

9 JUDGE LUTON: All right, this is plain hearsay.
10 The, the objection is granted and I'm going to strike the
11 sentence which reads, "The contractor seemed to know the
12 area." This is guess and speculation on Mr. Meyers' part.
13 Now, Mr. Meyers' would be permitted to say, however, that he
14 told the contractor that he, Meyers, would rent a truck and do
15 whatever. Mr. Meyers is able to testify to what he did and
16 what he said, but not to what the dealer felt, or thought, or
17 believed. Are we talking about a dealer here? No, the
18 contractor. So, Mr. Meyers, I'm trying to help you out here.

19 MR. MEYERS: Thank you, sir.

20 JUDGE LUTON: I want to take out the language which
21 says, "The contractor seemed to know the area." Well, how do
22 you know that? Well, you guessed, speculation. I don't know,
23 you may be right, you may not be.

24 MR. MEYERS: He, he expressed his --

25 JUDGE LUTON: Yeah.

1 MR. MEYERS: -- understanding of where it was --

2 JUDGE LUTON: If he were here to tell us that, it
3 would be one thing.

4 MR. MEYERS: I understand.

5 JUDGE LUTON: But he's not here. You're here to
6 tell us purportedly what he had to say. But it's okay for
7 Mr. Meyers, who is here, to tell us, "Meyers told him,"
8 whoever him is, the contractor -- right?

9 MR. MEYERS: Yes, sir.

10 JUDGE LUTON: -- whatever it is that Meyers told
11 him. Do you want to reform that testimony?

12 MR. MEYERS: Meyers told the contractor.

13 JUDGE LUTON: Told the contractor what?

14 MR. MEYERS: That he, Meyers, would rent a truck to
15 move them; "them" being referring to the tower sections.

16 JUDGE LUTON: He would rent a truck to move the
17 tower sections. Let me give the Bureau an opportunity to
18 object to that. I'm striking the language which says, "The
19 contractor seemed to know the area and wanted to know how
20 Meyers' was going to transport the sections to Chatom.
21 Whereupon striking all that. Starting a new sentence, "Meyers
22 told the contractor that he would rent a truck to move the
23 tower sections."

24 MR. SHOOK: The Bureau has no objection to that.

25 JUDGE LUTON: All right, I think that's

1 unobjectionable. Let's proceed.

2 MR. SHOOK: Your Honor, I take it with respect to
3 the next sentence that it, it would be limited to the state of
4 mind of Mr. Meyers in terms of what the contractor suggested
5 as opposed to asserting it for the truth of the matter with
6 respect to --

7 JUDGE LUTON: I don't know. It seems to me this
8 is -- you're going to have to know about how did he suggest,
9 and, oh, what, what exactly does "suggest" mean in this
10 particular context. "The contractor suggested." Did he
11 suggest it by saying, "I suggest that you do such and such a
12 thing"? If it is, it's clear hearsay.

13 MR. SHOOK: Well, Your Honor, I mean, the problem
14 with the way this is written --

15 JUDGE LUTON: Right, there's a problem. It's very
16 difficult to know just, just what it is. What, what are
17 you -- well --

18 MR. MEYERS: Your --

19 JUDGE LUTON: Is this Mr. Meyers talking here or is
20 this Mr. Meyers telling us what the contractor had to say?

21 MR. MEYERS: I'm relating to you an incident that
22 occurred, and what I was told by this person. In my own
23 words, but I'm, I'm relating to you what was told to me, in
24 other words, in the course of a discussion about what were we
25 doing, you know --

1 JUDGE LUTON: Right.

2 MR. MEYERS: People, when, when you starting about
3 the fact that you're building a radio station, everybody wants
4 to know something about it and -- well, for whatever their own
5 interest, and in that course of discussion what we were doing
6 with the equipment that we were acquiring, and so forth. This
7 fellow said -- I, I say this in the recollection that he knew,
8 he knew the area, and he went through that area frequently,
9 and could take the stuff for us instead of having to go
10 through the process of renting a truck. It was a gesture on
11 his part. I was trying to relate that.

12 JUDGE LUTON: Objection is overruled.

13 MR. SHOOK: Your Honor, the Bureau's next objection
14 is with respect to the third paragraph that appears on
15 page 24, except for the portion of that paragraph which is one
16 sentence that begins with, "On March 12, he drove to
17 Melbourne, Florida." The Bureau has no objection to that part
18 of the paragraph. The Bureau does object to the rest of the
19 paragraph on the grounds that it is irrelevant.

20 JUDGE LUTON: At the very least, Mr. Meyers, it's
21 not evidentiary. It doesn't tell us anything that we need to
22 know. You planned to go but you didn't go; nothing happened.

23 MR. MEYERS: I agree.

24 JUDGE LUTON: So the Bureau does not object to that
25 portion of the sentence and paragraph that says, "On March 12,

1 he --" meaning Mr. Meyers, "drove to Melbourne, Florida." The
2 question is, so what? Does that tell us anything that we need
3 to know? Maybe it does, I don't know.

4 MR. MEYERS: And I was not in Chatom.

5 JUDGE LUTON: Is that useful information with
6 respect to the issues we are facing?

7 MR. MEYERS: I believe it relates to the other parts
8 of the dialogue here, the monologue.

9 JUDGE LUTON: Okay, I'll take your word for it, I
10 don't know. Well, then I'm going to strike -- going to grant
11 the objection and strike all the paragraph except, and
12 starting a new sentence, with the last two words, the second
13 line from the bottom of the language which reads, "On
14 March 12, he --" I'm going to change that to Mr. Meyers, is
15 that all right? I think so -- "drove to Melbourne, Florida."
16 That language will be retained; the rest of the paragraph is
17 stricken. Next objection.

18 MR. SHOOK: The next objection is with respect to
19 the paragraph that begins on the bottom of page 24, carries
20 over to the top of page 25. The Bureau objects to the
21 second-to-the-last sentence which reads, "The same employee
22 Meyers talked with earlier told Meyers" et cetera. The Bureau
23 objects to that sentence on the grounds of hearsay.

24 JUDGE LUTON: Yeah. If, Mr. Meyers, that language
25 is offered by Benchmark to prove that it is true, the

1 contractor was out of town and that the truck had left for
2 Mississippi, it's hearsay and not admissible. On the other
3 hand, if the language is offered only to show that some
4 employee talked with you, that's another matter. That would
5 be admissible. Which is it? My guess is that this is offered
6 to show more than that some employee talked with you, but
7 instead that this unnamed employee informed you that the
8 contractor was out of town, the truck had left for
9 Mississippi. That's what you want to prove, isn't it?

10 MR. MEYERS: It is to prove that I assumed that the
11 truck had left for Mississippi.

12 JUDGE LUTON: You assumed it?

13 MR. MEYERS: I, I think I stated it in the next
14 paragraph. In other words, what I -- I guess what I'm trying
15 to say here is, is that the employee that I spoke with didn't
16 have very much information except that the contractor that I
17 had dealt with was not there, and also the equipment was not
18 there, and the truck was not there. I was more or less
19 putting two and two together to assume that they had done what
20 they said they were doing. If it would be a little, a little
21 easier, I could say in there that "as Meyers recalls, the same
22 employee talked with Meyers." Would that --

23 JUDGE LUTON: I'm going to let that stand. "The
24 same employee Meyers talked with earlier told Meyers the
25 contractor was out of town for various reasons." That's fine

1 insofar as it only goes to show that Mr. Meyers talked with an
2 employee who said certain things, but if this language were to
3 be taken as some sort of proof that the employee in fact said
4 certain things, it would be a different matter and it would be
5 rejected as hearsay.

6 MR. MEYERS: Um-hum.

7 JUDGE LUTON: I'm taking the view that it is not
8 offered for the truth of the matter asserted, it's not
9 hearsay, and therefore admissible.

10 MR. MEYERS: Thank you, sir.

11 JUDGE LUTON: I don't see how it can possibly help
12 resolve the issues that we're faced with. However, having
13 said all that, please proceed. Objection is overruled.

14 MR. SHOOK: The Bureau's next objection is with
15 respect to the second full paragraph that appears on page 26.
16 The Bureau objects on the grounds that that paragraph is
17 irrelevant and speculative.

18 JUDGE LUTON: Well, tell me, tell me some more.
19 Irrelevant, speculative?

20 MR. SHOOK: Your Honor, having read through this
21 paragraph, I, I just have no idea how it's supposed to fit in
22 with whether or not submissions made by Mr. Meyers on behalf
23 of Benchmark were or were not truthful.

24 JUDGE LUTON: Which paragraph are we talking about,
25 Mr. --

1 MR. SHOOK: The paragraph --

2 JUDGE LUTON: "Meyers stayed frequently at the --

3 MR. SHOOK: Yes, sir.

4 JUDGE LUTON: -- Timberland Motel?"

5 MR. SHOOK: Yes, sir.

6 JUDGE LUTON: Okay. "Now owned by a George Moss."

7 Is that important, who it's now owned by? I don't think so.

8 MR. MEYERS: It is to the extent that, that Mr. Moss
9 was, of course, the mortgage holder at the time of the
10 occurrence. He is now the owner again. He, he knew, he knew
11 me --

12 JUDGE LUTON: He knew you.

13 MR. MEYERS: -- he still knows me. I was attempting
14 to relate more time information there as opposed to the
15 relevancy of Mr. Moss himself.

16 JUDGE LUTON: Okay, how about Mike Patel?

17 MR. MEYERS: Mike Patel was the -- at that time, was
18 the owner of the motel.

19 JUDGE LUTON: So what?

20 MR. MEYERS: And he, he became rather intimately
21 involved with our attempts over there at the time.

22 JUDGE LUTON: This paragraph doesn't say that. It
23 goes on to say -- I, I think that so far as we've moved in
24 that paragraph, it's really not immaterial. Maybe there is
25 some relevance but it's just altogether immaterial who owned

1 the Timberland Motel when. "He rented a room, 8, his office,
2 storeroom, and later for a year and a half, as living quarters
3 for his brother, Peter Meyers, who came to Chatom to supervise
4 after May 15." To say, I, I -- well -- it seems to me that
5 towards the end of the paragraph we get to what might be truly
6 important here. "Meyers believed it is possible that he
7 directed the contractor to deliver the tower to the motel."
8 That doesn't state a fact.

9 MR. MEYERS: That's exactly right. I, I absolutely
10 do not know that for a fact on this date.

11 JUDGE LUTON: That's what you're supposed to.

12 MR. MEYERS: But we, we kind of concluded --

13 JUDGE LUTON: Yeah.

14 MR. MEYERS: -- from discussion about what happened
15 that this is where it went.

16 JUDGE LUTON: Yeah. It's, it's -- and the basis of
17 the guess is the claim that Meyers frequently sent things to
18 Chatom care of the motel.

19 MR. MEYERS: Right.

20 JUDGE LUTON: And because that happened sometimes,
21 you believe it's possible that you directed the contractor to
22 deliver the tower to the motel.

23 MR. MEYERS: Yes, sir.

24 JUDGE LUTON: Yeah. That's the speculation that you
25 are troubled by, right?

1 MR. SHOOK: Well, Your Honor, it's not reflected in
2 any contemporaneous document, either to the motel owner, to
3 the contractor, to anybody that --

4 JUDGE LUTON: And it shouldn't. It's just plain to
5 see it's written as guesswork. You don't know what you're
6 talking about here.

7 MR. MEYERS: I, I don't know.

8 JUDGE LUTON: Okay.

9 MR. MEYERS: I can't prove it.

10 JUDGE LUTON: You certainly can't. Objection is
11 granted. Objection is sustained; the entire paragraph is
12 stricken.

13 MR. SHOOK: Your Honor, the Bureau has a similar --
14 similar objections to the following paragraph that begins on
15 the bottom of page 26 and carries over to the middle of
16 page 27. The matters therein are either irrelevant,
17 speculative, or both.

18 JUDGE LUTON: I don't see how that entire paragraph
19 tells us anything that is useful. Tell you why: "Patel had
20 become very interested in the radio station. He even wanted
21 to have the studios at the motel." Well, Mr. Patel would be
22 the one to tell us about that, not Mr. Meyers.

23 MR. MEYERS: The purpose of that paragraph was to
24 prove --

25 JUDGE LUTON: Let me just go ahead here and state my

1 criticisms of it on the record. "Patel, who Meyers recalls
2 was an amateur radio operator, expressed a desire to work at
3 the station on a part-time basis." Well, if that was the
4 case, Patel should be here this morning to tell us about that.
5 "Patel would have had the knowledge to recognize certain
6 matters." Says Mr. Meyers, who is attempting to tell us what
7 knowledge Patel would and should have had. Improper
8 testimony. Meyers does not know for a fact that any of this
9 took place, but he nevertheless draws a conclusion that it did
10 take place. That's guesswork. Witnesses ought to give
11 testimony with respect to facts, things they know about.
12 That's the difficulty with Meyers trying to tell us what Patel
13 knew, and felt, and thought. You can't do that. "Meyers has
14 attempted to track Patel down. Patel has disappeared from the
15 face of the earth so far as Benchmark is concerned." That
16 paragraph tells us absolutely nothing that I can see. You do
17 agree, all right. Thank you, let's grant the motion and
18 strike the entire paragraph, which is a bit more than the
19 Bureau had objected to.

20 MR. SHOOK: No, actually, Your Honor, I did object
21 to the entire paragraph.

22 JUDGE LUTON: Did you? All right. Let's strike it
23 all. We're down now to page 27. How much more have we got
24 here? A lot.

25 MR. SHOOK: Your Honor, a quick glance through most

1 of what I have got here, most of it is not objectionable
2 insofar as the Bureau is concerned, so perhaps it will go
3 quicker than Your Honor expects.

4 JUDGE LUTON: All right.

5 MR. SHOOK: The Bureau does object to the bulk of
6 the paragraph that follows except for the portion of the first
7 sentence that would read, "Meyers returned to Melbourne around
8 the 1st of April and confronted the contractor about the tower
9 delivery" period. From then on, the Bureau objects. We have
10 a combination of speculation, hearsay, and irrelevant matters.

11 JUDGE LUTON: "Meyers returned to Melbourne around
12 the 1st of April and confronted the contractor about the tower
13 delivery." Then comes the impression by Mr. Meyers that the
14 contractor was very angry about, as this says, "the tower
15 sections he sent being refused." I think up to that point the
16 sentence is okay. I don't know that it's particularly
17 meaningful, but the sentence doesn't stop there. It goes on
18 to say "even though he --" meaning the contractor, "admitted
19 they were the wrong ones." That's hearsay. The contractor is
20 not here. He's the one to tell us what he had to say. So,
21 Mr. Meyers, I will keep -- I'll just shorten that sentence to
22 the previous line. I'll put a period after the word "refused"
23 and remove the hearsay objection about what the contractor
24 supposedly admitted. Now, this is hearsay. "The contractor
25 said he had given the tower --" sections, I suppose, "to

1 someone else because he believed Meyers was no longer
2 interested in them." You need the contractor here to give
3 that kind of testimony. The fact that Meyers tried to get the
4 contractor to write a letter and was unsuccessful; that Meyers
5 has tried to find the contractor and has been unsuccessful,
6 only Benchmark cares about that. We don't care about it here
7 today in terms of resolving these issues. That's another
8 immaterial. That takes us to the end of the paragraph. Next
9 objection.

10 MR. SHOOK: With respect to the first full paragraph
11 that appears on page 28, the third sentence, the Bureau has a
12 hearsay objection. "Meyers was told that a delivery attempt
13 was made but when the trailer started coming apart the attempt
14 was aborted."

15 JUDGE LUTON: All right, plainly hearsay, granted.
16 Sustained, rather, and the sentence is stricken, that is, the
17 sentence which reads, "Meyers was told that a delivery attempt
18 was made but when the trailer started coming apart the attempt
19 was aborted." We don't even know who is supposed to have said
20 this. Hearsay by some unnamed person.

21 MR. SHOOK: Your Honor, then the Bureau would object
22 to the remainder of the paragraph on the grounds of relevancy.

23 JUDGE LUTON: Asked this unnamed person if the
24 dealer intended to do certain things; never able to contact
25 the dealer or anyone after that. I don't see that any of that

1 is any good but "to Gulf Breeze only to find the lot cleared,"
2 that may have some meaning to Benchmark's case. I don't know.
3 Well, let's just take it -- after the sentence that I had
4 stricken, starting right after that, the next sentence, Meyers
5 asked this unnamed person -- I don't know who, who is giving
6 the testimony here and if it's intended, as I suspect it is,
7 to assert a truth of the matter stated as plain hearsay, that
8 this unnamed person told Mr. Meyers that there were no more
9 units available. Meyers was never able to contact the dealer
10 or anyone else after that, okay. "Meyers, on his next trip to
11 Chatom, detoured to Gulf Breeze only to find the lot cleared."
12 That's not hearsay and I don't know the relevance of it but
13 I'll chance it and permit that to stand. Next objection.

14 MR. SHOOK: Your Honor, just so I'm clear, there are
15 two sentences from that paragraph that are being stricken?

16 JUDGE LUTON: That's correct, and one follows the
17 other.

18 MR. SHOOK: Thank you. Your Honor, with respect to
19 paragraph -- or, excuse me, page 32, the first full paragraph
20 that appears, the Bureau would request that the word "filed"
21 be changed to "mailed" because the document --

22 JUDGE LUTON: There is a difference in this
23 Commission practice is what you're saying. There is a
24 difference here. You don't file something by mailing it, is
25 that what you're saying?

1 MR. SHOOK: Well, Your Honor, the attachment in
2 question reflects that the document was mailed on May 30,
3 1988, but there is nothing which reflects when the document
4 was actually filed with the Commission.

5 JUDGE LUTON: That's what I'm saying, there is a
6 difference between filing --

7 MR. SHOOK: Yes, sir.

8 JUDGE LUTON: -- and mailing in Commission practice.
9 You understand?

10 MR. MEYERS: Yes, sir.

11 JUDGE LUTON: Yeah.

12 MR. MEYERS: I have no objection.

13 JUDGE LUTON: I don't see that that's objectionable.
14 It was mailed. Change the word "filed" to "mailed."

15 MR. SHOOK: Your Honor, the Bureau's next objection
16 is with respect to the paragraph that begins on the bottom of
17 page 32 and carries over to the top of page 33. The Bureau
18 objects to the entire paragraph on the grounds that it is
19 irrelevant.

20 JUDGE LUTON: Okay, this is -- we had a different
21 objection here, Mr. Meyers. The claim is not that it is
22 hearsay but that it doesn't have anything to do with anything.

23 MR. MEYERS: I'm sorry, I've lost my place.

24 JUDGE LUTON: We're up to the -- page 32 --

25 MR. MEYERS: Yes, sir.

1 JUDGE LUTON: The paragraph, the last paragraph
2 beginning on that page.

3 MR. MEYERS: "Subsequently called the Commission"?

4 JUDGE LUTON: That's correct.

5 MR. MEYERS: Yes, sir. I guess this was a
6 conversation that I had with a staff member.

7 JUDGE LUTON: How about the next sentence? It says
8 that there's a letter.

9 MR. MEYERS: I believe it, it does refer to a letter
10 where that confirms that situation. I'm not entirely sure
11 whether -- here, I made a quote from that letter, right there,
12 from Mr. Eads.

13 JUDGE LUTON: That may be relevant to something that
14 the Designation Order dealt with. I'm going to overrule the
15 objection and permit it to stand.

16 MR. SHOOK: The Bureau's next objection is with
17 respect to the second full paragraph that appears on page 33,
18 beginning with "further," and then "it's Gehman." I guess
19 it's a name.

20 MR. MEYERS: "It's a Gehman," it's saying as I -- I
21 think it just didn't get capitalized. Word processors, you
22 know.

23 MR. SHOOK: The Bureau would object to that
24 paragraph on the grounds that it is irrelevant.

25 JUDGE LUTON: Is it relevant to the issues,

1 Mr. Meyers?

2 MR. MEYERS: To the effect that this gentleman was
3 making statements to the Commission that we were attempting to
4 mislead the Commission, these are some of the statements he
5 made. I was, I was relating to our objection to his petition
6 to deny that we had tried to indicate he made the statement
7 and it was irrelevant. It was hearsay.

8 JUDGE LUTON: And I guess that this is, I don't know
9 about hearsay, but this is irrelevant to the issues that we
10 are trying today. I'm going to grant the -- sustain the
11 objection and strike the paragraph in its entirety.

12 MR. SHOOK: The Bureau's next objection is with
13 respect to the third paragraph that appears on page 34. The
14 Bureau has no objection to the first sentence of that
15 paragraph, but the Bureau does object to the next two
16 sentences --

17 JUDGE LUTON: All right.

18 MR. SHOOK: -- on the grounds that it is irrelevant.

19 JUDGE LUTON: Indeed it is. Objection sustained.
20 The only thing that remains in that third paragraph is that
21 Benchmark has already documented to the Commission that the
22 trailer was on the site on May 16. That's Benchmark's
23 position. This paragraph only goes on to challenge Gehman's
24 veracity, motives, and asserts a certain Commission neglect,
25 none of which is relevant to anything. That's my ruling.

1 MR. SHOOK: The Bureau's next objection is to the
2 following paragraph for basically the same reasons as just
3 stated by Your Honor, that the paragraph is irrelevant.

4 JUDGE LUTON: It's also argumentative. That's not
5 evidence; that's argument. Granted, the paragraph is
6 stricken.

7 MR. SHOOK: The Bureau's next objection is with
8 respect to the second full paragraph that appears on page 35.
9 The Bureau objects to the portion of that paragraph which
10 begins with the word "attesting," so the, the phrase, or the
11 clause, "attesting to the same misrepresentations that Gehman
12 had made on July 7," the Bureau objects to that on the grounds
13 of -- that it is irrelevant.

14 JUDGE LUTON: What does this have to do with,
15 Mr. Meyers?

16 MR. MEYERS: I'm, I'm merely trying relate here that
17 Mr. Gehman's filing of his objection was loaded with
18 misinformation. He, he was purporting this to be correct
19 information and telling the Commission that we were giving
20 misinformation; and, in fact, we continue to this day -- I --
21 as I sat in his office during the deposition, I found another
22 place where Mr. Gehman had not filed correct information.

23 JUDGE LUTON: Okay, I suppose we were to conclude --
24 if we were considering the question and we concluded that
25 Mr. Gehman filed incorrect information, would that help

1 Benchmark in this present difficulty?

2 MR. MEYERS: I believe it's relevant to the, to the
3 situation that we're in. I may be the only one that assumes
4 that.

5 JUDGE LUTON: Benchmark's problem that we're dealing
6 with comes from the Commission, not Mr. Gehman. I don't see
7 the relevance in this. Objection is sustained.

8 MR. MEYERS: We're striking the word
9 "misrepresentation"?

10 JUDGE LUTON: The, the whole --

11 MR. MEYERS: The whole paragraph.

12 JUDGE LUTON: The whole paragraph.

13 MR. SHOOK: The Bureau's next objection is to the
14 last full paragraph on page 36. The Bureau objects to that
15 paragraph on the grounds that it is irrelevant.

16 JUDGE LUTON: "Alabama Native prepared an agreement
17 to settle the differences between the parties." Who cares.

18 MR. MEYERS: Okay.

19 JUDGE LUTON: Sustained.

20 MR. SHOOK: The Bureau has the same objection to the
21 following paragraph that begins on the bottom of page 36 and
22 carries over to page 37.

23 JUDGE LUTON: Okay, "Alabama Native filed a
24 Petition" which said some things. So what? Relevant?

25 MR. MEYERS: It was again provided as information

1 about the time line in there, and, and certainly I, I have no
2 objection to objecting to it. If, if you feel that it is --

3 JUDGE LUTON: Whatever the times were, the times
4 stand independently of anything that Alabama Native might have
5 said in a petition that it filed at a certain time. Well,
6 maybe that isn't altogether true. "Alabama Native filed a
7 Petition -- the action suggested --" Presumably this is the
8 filing by Alabama Native. It suggested that the Commission do
9 certain things, namely accept a joint solution?

10 MR. MEYERS: Yes, sir.

11 JUDGE LUTON: Alabama Native is making these
12 proposals. Nobody cares. Benchmark does but I don't even --
13 I don't -- Alabama Native is not a party here. Its filings
14 are a matter of Commission record and whatever has happened to
15 them, it has happened already. I just -- I'm trying really
16 hard not to, to take a long view of Benchmark's effort but,
17 again, I just don't see how this goes any way toward helping
18 Benchmark in this case that I'm going to decide. I just don't
19 see the relevance of this stuff. Well, I'm through
20 apologizing. Objection sustained, the paragraph is stricken
21 in its entirety.

22 MR. SHOOK: Your Honor, the Bureau has the same
23 objection to the remainder of the paragraphs that appear on
24 page 37.

25 JUDGE LUTON: All right, the following two tell us